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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

13 Cr. 635 (SAS)

6 DINO BOUTERSE,

7 Defendant.  
8 -----x  
9

10 New York, N.Y.  
11 July 23, 2014  
12 3:45 p.m.  
13

14 Before:

15 HON. SHIRA A. SCHEINDLIN,

16 District Judge  
17

18 APPEARANCES  
19

20 PREET BHARARA

21 United States Attorney for the  
22 Southern District of New York  
23

24 ADAM FEE  
25 MICHAEL LOCKARD

Assistant United States Attorneys  
26

27 RICHARD H. ROSENBERG  
28

29 MICHAEL HUESTON  
30

31 JOSE ARRUFAT-GRACIA  
32

33 Attorneys for Defendant  
34

35 ALSO PRESENT: BERNARD GROENEVELD, Interpreter (Dutch)  
36  
37

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1 (Case called)

2 THE COURT: Good afternoon, Mr. Fee.

3 MR. FEE: Good afternoon, your Honor.

4 THE COURT: I understand Mr. Lockhart will be here in  
5 a while.

6 MR. FEE: Yes, your Honor. Thank you.

7 THE COURT: Good afternoon, Mr. Rosenberg.

8 MR. ROSENBERG: Good afternoon, your Honor.

9 THE COURT: Good afternoon, Mr. Hueston.

10 MR. HUESTON: Good afternoon, your Honor.

11 THE COURT: Good afternoon, Mr. Arrufat Garcia.

12 MR. ARRUFAT-GRACIA: Good afternoon, your Honor.

13 THE COURT: And the defendant, Mr. Bouterse, good  
14 afternoon.

15 Are you a Dutch interpreter?

16 THE INTERPRETER: Dutch.

17 THE COURT: I understand from the defendant that he  
18 does understand English, he speaks English, he understands  
19 English, but just in case he wanted you here. If he doesn't  
20 understand something I say and wants to stop for a minute and  
21 consult with you, that's okay, but you don't need to interpret  
22 every word.

23 THE INTERPRETER: Technical terms, mostly.

24 THE COURT: Mr. Bouterse, if you want to speak to the  
25 interpreter, just go like that.

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1                   THE DEFENDANT: Yes, your Honor.

2                   THE COURT: In some way indicate. Just indicate.

3 I'll try to read slowly, but if you need to consult.

4                   What I'm here to do today is to read into the record a  
5 decision on the pending motions or motion.

6                   Mr. Bouterse is charged with one count of  
7 participating in a narcotics conspiracy, one count of using or  
8 possessing a weapon in furtherance of that conspiracy, and one  
9 count of attempting to provide material support to a foreign  
10 terrorist organization.

11                  Defendant now moves to dismiss the indictment or, in  
12 the alternative, to suppress his postarrest statements and to  
13 compel the government to produce certain discovery.

14                  I start with the background by summarizing the  
15 allegations in the indictment. Mr. Bouterse is the son of the  
16 current president of Suriname. According to the United States  
17 Government, he is also the head of Suriname counterterrorism  
18 unit.

19                  In early 2013, he became the target of a U.S. Drug  
20 Enforcement Administration sting operation. That's the DEA.  
21 In February 2013, the defendant met with several individuals  
22 who purported to work for Mexican narcotics traffickers but  
23 who, in fact, were confidential informants for the DEA to  
24 discuss how the defendant could facilitate narcotics  
25 trafficking activities and assist the informants in obtaining

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1 weapons.

2 On June 27 and June 28, Mr. Bouterse met with the  
3 informants to fill out the paperwork necessary to obtain false  
4 Surinamese passports and further discussed plans to traffic  
5 cocaine. During the June 28 meeting, the defendant showed the  
6 informants a rocket launcher that he kept in his office safe.

7 In late July, defendant and Edmund Muntslag, a  
8 codefendant, arranged to ship a test load of 10 kilograms of  
9 cocaine to Trinidad and Tobago.

10 On July 3, one of the confidential informants told the  
11 defendant that he had associates connected with Hezbollah who  
12 would like the defendant's assistance in obtaining weapons.

13 On July 31, Bouterse met with several individuals who  
14 are also confidential informants, as well as an undercover DEA  
15 agent who all purported to be members of Hezbollah. Bouterse  
16 said that he would both assist Hezbollah in getting 30 to 60  
17 operatives into Suriname and provide them housing and training  
18 facilities. He also offered to provide false Surinamese  
19 passports and said that he would look into obtaining weapons  
20 for the operatives.

21 On August 29, Bouterse met with the undercover agent  
22 and an informant in Panama, where he indicated that everything  
23 was ready for the operative's arrival in Suriname and there  
24 would be some toys available for the undercover agent to  
25 inspect when he arrived in Suriname. Bouterse also gave the

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1 undercover agent a Surinamese passport with an exit stamp so  
2 that it would appear as if the agent had previously left  
3 Suriname with this passport. Bouterse was promised \$2 million  
4 in good-faith money in exchange for providing the passport.

5 Following this meeting Bouterse was arrested by  
6 Panamanian officials. Of course, those facts were taken from  
7 the indictment.

8 Now, turning to the procedural history of the case.  
9 On August 15, that would be 2013, Bouterse was charged in a  
10 sealed indictment with one count of participating in a  
11 narcotics conspiracy and one count of using and possessing a  
12 weapon in the course of that conspiracy. A superseding  
13 indictment issued on August 20 added Muntslag to the conspiracy  
14 charge. That was the first superseding indictment. On the  
15 same day a magistrate judge issued arrest warrants for both  
16 defendants.

17 On August 29, following Bouterse's arrest in Panama,  
18 the United States Embassy transmitted a diplomatic note to the  
19 Panamanian government seeking Bouterse's conditional release to  
20 United States custody pursuant to Section 552A of Panama's  
21 criminal procedure code. And that section of the Panamanian  
22 code says, and I quote: For reasons of public safety and  
23 social interest, and by way of an exception, the executive  
24 branch will be able to grant the simple conditional surrender  
25 of a foreigner to a requesting state with the agreement that

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1 once the judicial proceeding he was requested for had been  
2 completed or once he has been tried in the requested state,  
3 whether he was acquitted or found guilty, and in that case once  
4 he has served his sentence, he will be returned to the Republic  
5 of Panama to continue with his criminal case if one is pending.

6 Now, the diplomatic note that was from the U.S. to  
7 Panama explained the charges in the first superseding  
8 indictment and it attached a copy of the arrest warrant. The  
9 note also states, and I quote: "Dino Bouterse represents a  
10 danger to Panama's public security because he is a supplier to  
11 international drug trafficking organizations which have access  
12 to large amounts of funds derived from the trafficking of large  
13 quantities of cocaine. These organizations and their members  
14 also regularly launder proceeds derived from their cocaine  
15 trafficking activities.

16 Additionally, Dino Bouterse, the son of the current  
17 president of Suriname, has indicated his interest in selling  
18 military type weapons to Hezbollah, the transnational criminal  
19 organization known to participate in international terrorist  
20 activities, as well as setting up a training camp in Suriname  
21 for Hezbollah and narcotics trafficking organizations.

22 Given the detailed information that Bouterse has about  
23 the activities of narcotics organizations, it is possible that  
24 he or members of these organizations may attempt to secure his  
25 release from custody either by attempting to corrupt public

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1 officials or through the use of violence."

2 On the same day, Panama granted the request for  
3 Bouterse's simple conditional surrender in an executive decree.  
4 The decree stated in relevant part, and I quote: "That the  
5 American authorities have pointed out that Bouterse has  
6 indicated his interest in selling military type weapons to  
7 Hezbollah, an international criminal organization renowned for  
8 its participation in international terrorist activities, as  
9 well as in setting up a training camp in Suriname for Hezbollah  
10 and for organizations related to drug trafficking. The  
11 diplomatic representatives go on to state that it is possible  
12 that members of said international organizations will attempt  
13 to free him from custody either by attempting to corrupt  
14 officials or through the use of violence. The ties of Bouterse  
15 to extremely dangerous criminal organizations make his presence  
16 in the Republic of Panama a risk to the community. And his  
17 simple conditional surrender is clearly grounded in reasons of  
18 both public safety and social interest." Bouterse was then  
19 released into custody of DEA agents in Panama and transported  
20 to New York.

21 The second superseding indictment was filed on  
22 November 7, 2013, adding one count of attempting to provide  
23 material support to a designated terrorist organization against  
24 Bouterse.

25 Good afternoon, Mr. Lockard.

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1 MR. LOCKARD: Good afternoon, your Honor.

2 THE COURT: According to Bouterse, he was "kept in  
3 detention by Panamanian law enforcement for approximately six  
4 hours during which time he was leg shackled and handcuffed."  
5 That comes from Mr. Bouterse's March 27, 2014 declaration at  
6 paragraph 5.

7 He was then driven to an airport hanger and shown a  
8 Spanish language document authorizing his removal from Panama.  
9 Bouterse was then addressed by an individual who identified  
10 himself as a United States federal agent and was told that he  
11 would be taken to New York. Once Bouterse was on the plane, an  
12 agent gave him an advice of rights form and read it out loud.  
13 Bouterse signed the form but did not initial the spaces next to  
14 certain rights.

15 After Bouterse signed the form the agents told him  
16 about the drug charges. And according to him they threatened  
17 that unless he talked he would be facing terrorism charges in  
18 New York. Bouterse then began to answer the agent's questions.  
19 According to the government, he told the agents, and this is a  
20 quote: "That if they wanted to slow drug trafficking in  
21 Suriname, they needed to send more agents there." An agent  
22 asked Bouterse who supplied the 10 kilograms of cocaine shipped  
23 in late July and Bouterse answered that Muntslag would know the  
24 answer. Bouterse then refused to answer any further questions.

25 Bouterse moves to dismiss Count One of the second

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1 superseding indictment. That's the charge of attempting to  
2 provide material support to a terrorist organization for  
3 violating the doctrine of specialty. The doctrine of  
4 specialty -- and I quote from a recent Second Circuit case --  
5 "the doctrine of specialty prohibits prosecution of a defendant  
6 for a crime other than the crime to which he has been  
7 extradited." Bouterse argues that because Panama only  
8 surrendered him to face the charges in the first superseding  
9 indictment, he may not be tried on the new count.

10 The government responds that the doctrine of specialty  
11 applies only to removal by extradition treaty, not by mutual  
12 cooperation. Although the Second Circuit has not addressed  
13 whether the doctrine of specialty applies in nonextradition  
14 circumstances, the Ninth Circuit recently addressed this  
15 question in a similar context.

16 In United States v. Stuckman, the defendant was a  
17 United States citizen charged with tax fraud. After the  
18 indictment issued, Stuckman traveled to Panama on a tourist  
19 visa and stayed there. The United States Government vigorously  
20 sought Stuckman's return and extensively communicated with the  
21 Panamanian government to secure his deportation. The district  
22 court rejected Stuckman's motion to dismiss the indictment on  
23 the grounds that his removal from Panama violated the  
24 extradition treaty between the two stations.

25 The Ninth Circuit affirmed, holding that, and I quote,

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1 "persuasion and cooperation not necessarily add up to  
2 extradition. Neither deportation nor surrender other than in  
3 response to a demand pursuant to a treaty, constitutes  
4 extradition." That's all a quote from the Ninth Circuit case.

5 The Court went on to explain that "while the  
6 formalities of extradition may be waived, a demand in some form  
7 by the one country upon the other is required in order to  
8 distinguish extradition from the unilateral act of one country  
9 for its own purposes, reporting or otherwise unilaterally  
10 removing unwelcome aliens."

11 Bouterse argues that courts have applied the doctrine  
12 of specialty in cases where extradition was accomplished by  
13 comity rather than treaty. But the only case to directly  
14 support defendant's premise is United States v. Evans, a 1987  
15 decision from the Southern District of New York which said, in  
16 dicta, that the specialty doctrine is applicable when  
17 extradition is obtained through acts of comity by the  
18 surrendering government instead of by treaty.

19 In that case, the United States Customs Service wrote  
20 to and met with the Bermuda attorney general to seek the  
21 deportation of certain individuals who were charged in a sting  
22 operation for attempting to sell arms to Iran. The offense was  
23 not covered by the United States Bermuda extradition treaty,  
24 but Bermuda granted the request for deportation and that  
25 decision was affirmed by a Bermuda court.

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1                   The other two cases that were cited involve formal  
2 extradition requests and extradition accomplished through legal  
3 proceedings in the foreign state. In Fioconni v. The Attorney  
4 General of the United States, the United States embassy in Rome  
5 requested the extradition of two individuals charged with drug  
6 trafficking.

7                   Although the U.S Italy extradition treaty did not  
8 include narcotics crimes, a court in Italy granted the  
9 extradition request as an act of comity because drug  
10 trafficking was also a crime under Italian law. In United  
11 States v. Gonzalez, the U.S. Government requested the  
12 extradition of an individual charged with armed robbery from  
13 Colombia. The Court in Gonzalez said: "Although the United  
14 States and Colombia have no extradition treaty, the request was  
15 made pursuant to a December 1997 Colombian constitutional  
16 amendment allowing extradition to the United States. The  
17 Colombian Supreme Court granted extradition of Gonzalez to the  
18 U.S. on some but not all the charges filed in the superseding  
19 indictment."

20                   In both DOG and Gonzalez, extradition was accomplished  
21 by a formal request from the U.S. Government and legal  
22 proceedings in the foreign state. Similarly, in Evans, a  
23 Bermuda court ultimately approved the deportation order. In  
24 all three cases the countries agreed to extradite or deport as  
25 an accommodation to the U.S. request and the decisions were

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1 affirmed by domestic legal proceedings. These cases are  
2 consistent with the Ninth Circuit's reasoning that a formal  
3 demand is required in order to distinguish extradition from  
4 the unilateral act of one country for its own purposes,  
5 deporting or otherwise unilaterally removing the unwelcome  
6 aliens.

7 The facts here are distinguishable. While the U.S.  
8 requested Bouterse to surrender, Panama's decision to remove  
9 Bouterse was made because Bouterse's ties to extremely  
10 dangerous criminal organizations make his presence in the  
11 Republic of Panama a risk to the community. The Panamanian  
12 executive branch, not the Court, made the decision to remove  
13 Bouterse to preserve its own interests in public safety, not  
14 merely to accommodate the U.S.' request.

15 Even if the doctrine of specialty did apply, which I  
16 find it doesn't, Bouterse's challenge would be unsuccessful  
17 because the Panamanian government was undisputed when informed  
18 that Bouterse had "indicated his interest in selling military  
19 type weapons to Hezbollah, as well as setting up a training  
20 camp in Suriname for Hezbollah.

21 Defendant's contention that the doctrine of specialty  
22 is violated because there is no mention in the diplomatic note  
23 that the U.S. Government was intending to prosecute Bouterse  
24 for such conduct is meritless. Although Panama surrendered  
25 Bouterse to face the charges in the first superseding

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1 indictment, there is no evidence that Panama would regard the  
2 prosecution under the second superseding indictment as an  
3 affront to its sovereignty in light of the fact that it knew of  
4 the allegations connecting Bouterse to Hezbollah.

5 Bouterse also moved to dismiss the indictment based on  
6 outrageous government conduct. And I quote from United States  
7 v. Al Kassar, (2d Cir. 2011). The courts have acknowledged  
8 that government involvement in a crime may, in theory, become  
9 so excessive that it violates due process and requires the  
10 dismissal of charges against the defendant even if the  
11 defendant was not entrapped. Still quoting from Al Kassar, to  
12 establish a due process violation on this ground, a defendant  
13 must show that the government's conduct was so outrageous that  
14 common notion of fairness and decency would be offended where  
15 judicial processes invoked to obtain a conviction."

16 Bouterse argues that considered in totality, the  
17 government's extraordinary monetary inducement, as well as its  
18 decision to focus on Bouterse and Suriname, a country not  
19 considered by the U.S. Government to pose a substantial risk,  
20 the alleged violations of Surinamese law committed by  
21 informants and agents and alleged misrepresentations to the  
22 Panamanian government justify the dismissal of the indictment.  
23 According to Bouterse, an undercover agent told him that, and  
24 this is a quote, \$15 million has been authorized as payment by  
25 Hezbollah for assistance in setting up training camps in

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1 Suriname. That's a quote from the defendant's memorandum of  
2 law.

3 Additionally, Bouterse was offered \$2 million in  
4 good-faith money upon delivery of the false Surinamese  
5 passport. The Second Circuit recently acknowledged, albeit  
6 skeptically, and I quote from Cromitie, a recent Second Circuit  
7 case, 2013, the Second Circuit recently acknowledged that an  
8 offer of money might, in some unlikely circumstances, be so  
9 large as to constitute outrageous government conduct. The  
10 Court in Cromitie explained that the amount of money that might  
11 constitute a due process violation should be measured in  
12 relation to the inducement available for a particular criminal  
13 act for nongovernmental sources and the nature of the act  
14 itself.

15 Although \$15 million is a significant amount of money,  
16 it is reasonable compensation for Bouterse's promise to obtain  
17 fraudulent passports for dozens of Hezbollah operatives to  
18 establish schools, lodging, and security for Hezbollah  
19 operatives in Suriname. To obtain heavy weapons several of  
20 these terrorist operatives assist in transporting the  
21 operatives into Suriname over an extended period of time.

22 The government also notes that the amount of the  
23 proposed payment is further justified by the fact that Bouterse  
24 was one of the most powerful men in his country with access to  
25 government offices, armed personnel from the counterterrorism

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1 unit, weapons, cars, cash, narcotics, and other material goods.  
2 In light of the circumstances, offering \$15 million total, or  
3 \$2 million as good-faith money, is not outrageous government  
4 conduct meriting dismissal of the indictment.

5 Bouterse's other examples of alleged government  
6 misconduct are even less persuasive. Bouterse argues that, and  
7 I quote, "there has never existed a link to justify a sting  
8 operation against him." But he fails to otherwise explain why  
9 this is relevant.

10 The government is afforded wide latitude in  
11 investigating crime. The alleged violations of Surinamese law  
12 committed by government informants and agents, such as entering  
13 Suriname using false documents or failing to declare cash with  
14 customs, would not constitute outrageous conduct, only if they  
15 were violations of U.S. law.

16 More importantly, Bouterse cites no legal authority to  
17 explain why violations of a foreign country's law would  
18 constitute outrageous government conduct meriting dismissal.  
19 Finally, Bouterse argues that the diplomatic note led to the  
20 misimpression that Hezbollah agents posed a threat to the  
21 Panamanian government. A plain reading of the diplomatic note,  
22 however, leads to no such impression. But even if it did, the  
23 impression is not due to an affirmative misrepresentation by the  
24 U.S. Government, but rather the confusing wording or the  
25 potential for mistranslation.

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I turn now to the motion to suppress. The government bears the burden of proving the statements made in the course of interrogation were made knowingly and voluntarily by a preponderance of the evidence. The government must show that based on the totality of the circumstances, the investigating agents did not overbear the defendant's will and that the statements were a product of a rational intellect and a free will.

Even accepting all of the allegations in Bouterse's affidavit as true, there is no basis for granting his motion to suppress.

Bouterse's allegations that he was held by Panamanian authorities for several hours without being given information about his arrest or detention is irrelevant to the voluntariness of his statements to the DEA agents on the plane. Bouterse does not allege that he was tortured or otherwise mistreated by Panamanian or American officials.

Bouterse's affidavit also does not establish a basis to conclude that his statements were involuntary. The DEA agents advised Bouterse of his Miranda rights in writing and orally before asking questions. Bouterse speaks English and does not claim that he did not understand the form he signed. The only allegedly coercive statement Bouterse claims was made was that "unless he talked, he would face terrorism charges in New York." Bouterse states that he signed the waiver but did

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1 not answer questions until after the statement was made.

2                   First, the Second Circuit has repeatedly held that  
3 truthful statements about potential criminal liability,  
4 sentencing exposure or the benefits of cooperation are not  
5 coercive. And I cite United States v. Ruggles (2d Cir. 1995)  
6 which said that statements to the effect that it would be to a  
7 suspect's benefit to cooperate are not properly coercive.

8                   And an older case, United States v. Vine (1990), the  
9 mere mention of the possible sentence facing a defendant does  
10 not convert otherwise proper encounters between the police and  
11 the accused into a coercive and overbearing experience.

12                  Second, Bouterse admits that he signed the waiver  
13 before the statement was allegedly made, although he says that  
14 he only spoke after the statement. Nevertheless, because the  
15 facts alleged in his affidavit are insufficient to merit  
16 suppression, no hearing is necessary and the motion is denied.

17                  Bouterse also moves to compel production of audio and  
18 video recordings of meetings involving the confidential  
19 sources, communications with the Panamanian government,  
20 internal DEA files, as well as Brady material and disclosure of  
21 404(b) evidence. The government represents it has now produced  
22 the materials that falls into a Rule 16 and Brady disclosure  
23 obligation.

24                  In his reply memorandum Bouterse claims that the  
25 government still has not produced several recordings and phone

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1 records requested by the defense. So I am going to ask the  
2 government, have you now produced all the recordings and phone  
3 conversations that the defense has requested?

4 MR. FEE: Your Honor, there are three outstanding  
5 items of discovery. We produced the ones referenced in the  
6 memorandum. The three things are, there was an iPhone  
7 recovered from the defendant. It has now been unlocked by  
8 Apple. They have a tremendous backlog. As of last Tuesday,  
9 Apple gave us back the unlocked phone. We will have that for  
10 the defense within a week or two at the most, as soon as we  
11 download the information.

12 The second item was an e-mail search warrant which  
13 just returned from Google last Monday. I have a copy today. I  
14 will give that to defense.

15 The last outstanding actual recordings in the case  
16 concern people other than the defendant which, in the  
17 government's view is not Rule 16. We have agreed to turn it  
18 over to the defense, to interpret all of our disclosure  
19 obligations broadly, as we should.

20 We attempted to turn over a hard drive. There was a  
21 technical failure. We are going to work as quickly as we can  
22 hopefully within the next two weeks to get another copy.  
23 Again, these are recordings between sources and another  
24 unindicted coconspirator, not Mr. Bouterse. That's the  
25 landscape today.

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1                   THE COURT: They were all meetings that he was at that  
2 had been turned over.

3                   MR. FEE: Have long ago been turned over.

4                   THE COURT: How about communications with the  
5 Panamanian government?

6                   MR. FEE: Your Honor, we don't really think there is  
7 any provision of a Rule 16 or any other disclosure obligation  
8 that would bring those into the ambit of discovery in this  
9 case.

10                  THE COURT: You are not turning these over.

11                  MR. FEE: To the extent we have any, we are not  
12 turning them over. I actually don't think we have any.

13                  THE COURT: They are talking about internal DEA files.  
14 I am not sure what that means other than Jencks material, 3500  
15 material, which is not due yet.

16                  MR. FEE: We have turned over some DEA reports  
17 reflecting the statements of Mr. Bouterse.

18                  THE COURT: But at the appropriate time, if there are  
19 DEA statements of witnesses, you'll turn them over.

20                  MR. FEE: As soon as the Court tells us to do so. Of  
21 course, your Honor.

22                  THE COURT: How about 404(b)?

23                  MR. FEE: Your Honor, when and if the appropriate time  
24 is here, we will do so. We don't even have a trial date yet,  
25 as the Court is aware.

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1                   THE COURT: I assume that the government has met its  
2 disclosure obligations subject to some defense counsel telling  
3 me something specific that I can discuss today. I assume that  
4 the government will continue to comply with those obligations.

5                   So I will set a schedule for 404(b) and for 3500  
6 material as I set the trial date, which I think, now that the  
7 motions are denied, is the next step.

8                   Just before I do that, do any of the defense counsel  
9 want to say anything more about discovery issues?

10                  MR. HUESTON: Your Honor.

11                  THE COURT: Yes, Mr. Hueston.

12                  MR. HUESTON: Thank you, your Honor.

13                  I am going to get right to it. What we are really  
14 looking for, we detailed them in our memo. There is N80 or  
15 N23. They are conversations between an unindicted  
16 coconspirator when he's on an airplane after meetings with  
17 Mr. Bouterse with the confidential sources.

18                  THE COURT: Is that what you referred to, Mr. Fee, is  
19 that you are going to produce, even though you don't think you  
20 are really obligated to do it, in the spirit of all  
21 cooperation, you plan to do that in the next couple of weeks?

22                  MR. FEE: Yes, your Honor. That's exactly the two  
23 items I referred to.

24                  THE COURT: That's coming your way.

25                  MR. HUESTON: That's that issue.

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1                   With respect to the 404(b), I take the government's  
2 representations we are going to have a timeline set out for  
3 that and the 3500 material.

4                   THE COURT: Correct.

5                   MR. HUESTON: The issue about the operational file, as  
6 we see it, your Honor, the operational file, we see it as there  
7 is a Brady issue. So, obviously, if the government does seek  
8 Brady material in the operational file, that's something that  
9 we do think they should look at and notify us about.

10                  One of the concerns that we have in terms of the  
11 defense and Mr. Bouterse -- and I understand the Court's  
12 rulings. However, the decision to turn the investigation  
13 towards Suriname in December of 2011, we believe that the  
14 operational file would answer that and we do think in terms of  
15 perhaps an entrapment issue further on down the line in terms  
16 of making our defense, that file would be very important --

17                  THE COURT: I am not sure I'm understanding what file  
18 you are referring to.

19                  MR. HUESTON: Your Honor, the operational file, as we  
20 understand it, talks about issues in terms of what's the  
21 authority of the confidential sources in terms of their actions  
22 towards a suspect or a person that the United States government  
23 has targeted for investigation.

24                  In this case what we learned is that there was a  
25 preceding investigation against an unindicted coconspirator

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1 that went on for less than a year. And then at some point in  
2 December 2012, there was a change and a focus on Mr. Bouterse.  
3 I misspoke before when I said December 2011. So we believe the  
4 operational file gives the directions or the overviews to the  
5 confidential sources and what was their authority to act and  
6 target Mr. Bouterse in this case.

7 Also, in that --

8 THE COURT: I don't think that goes to the potential  
9 entrapment defense. Their actions are their actions. The real  
10 issue is his response. You can target any subject you choose  
11 and the reasons they target the subject are really not your  
12 concern. Once that person is targeted, that's when one starts  
13 to analyze entrapment. But the targeting is a decision that  
14 the law enforcement branches get to make.

15 MR. HUESTON: One of the issues in terms of  
16 predisposition, your Honor, and we do think that's going to  
17 be -- if there is a trial, that would be a hotly contested  
18 issue -- is that there is a DEA office that's in Suriname  
19 that's tasked to deal with issues of narcotics trafficking.  
20 And part of the operational file, what we would want to know  
21 is, in terms of intelligence, what the United States, the  
22 information they had on Mr. Bouterse's predisposition with  
23 respect to it.

24 THE COURT: That may come to you as 404(b). If they  
25 have evidence of similar acts, prior drug dealing that they

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would like to talk to a jury about, for the purposes that are permitted under 404(b), they are going to make that known and set a date now. I think that's what you are driving at, does this file reflect that they had information of other narcotics deals or didn't they. Did they just sort of target it cold or did they already have information. That may come out as part of 404(b).

MR. HUESTON: I think there is one other area in terms of where an operational file would be helpful to the defense. This goes to whether or not the confidential sources violated any restrictions or any guidelines that they were supposed to follow.

THE COURT: What if they did? What does that have to do with the defendant and his guilt or innocence of his defense and his trial if they violated some guidelines that may be an entirely different issue? I don't think that helps to exonerate him.

MR. HUESTON: The issue in terms of, as I look at it, in terms of credibility of an individual, I do think that's always an issue. And if there are guidelines or regulations that they are violating, they are violating the United States law, that's something that they should be questioned about.

THE COURT: I don't think you are right.

Mr. Fee, have you reviewed this operational file or can you do so to be certain that there is nothing in there that

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1 upon further review you think should be turned over either to  
2 impeach the credibility of an agent or an informant, or for the  
3 purpose of understanding the predisposition/entrapment issue?

4 MR. FEE: Your Honor, as with you, I share some  
5 befuddlement as to what an operational file is. We have  
6 reviewed plenty of internal DEA reports, files, many of which  
7 are in the hands of the defense. It sounds like with that last  
8 point, he is plainly describing Jencks Act and Giglio material.

9 THE COURT: No. I am not sure of that. He is saying  
10 there may be sort of a background file that one opens when one  
11 starts an investigation, and that file might say we are  
12 targeting this guy because he's a well-known narcotics  
13 trafficker or he has done this six or eight times, or it might  
14 show him talking about the confidential informant. We have had  
15 a problem with this informant before. He has taken money or  
16 bribes when he shouldn't. I'm making this up for the record.  
17 They are hypothetical. I just ask you to review any such file  
18 that they had started this operation. Maybe they had code  
19 names. These operations have code names. If there is such a  
20 file, look it over to assure yourself for Brady impeachment  
21 purposes, for potential entrapment defense, whatever the  
22 theories Mr. Hueston was able to articulate. I'm asking you to  
23 just take a close look and make sure you're meeting all your  
24 obligations.

25 MR. FEE: Yes, of course. Those are our obligations

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1 and we will continue to do so.

2 THE COURT: I think it's helpful for you, Mr. Hueston,  
3 for the kinds of things that might be there that the government  
4 should look for. I think these assistants will do that, with  
5 your hypotheticals or my hypotheticals in mind.

6 MR. HUESTON: I appreciate that, your Honor.

7 To get further guidance, in our submission attached to  
8 the notion of notice is my declaration and paragraph 12, your  
9 Honor, I note a March 21, 2014 demand letter, which I described  
10 some of the things. I don't know if they really encompassed  
11 everything we have talked about today, but the government does  
12 have that in terms of what the defense is asking them to review  
13 in this area. Thank you.

14 THE COURT: I'm sure that's helpful if you point them  
15 to that, and they can use that as a guide to be sure that all  
16 such materials may be reviewed. It may not be anything that  
17 anything needs to be produced. Maybe it does. And I'll take a  
18 look at that.

19 It is time to look for a trial date. If this has to  
20 go to trial, Mr. Fee, how long do you think the trial will  
21 take.

22 MR. FEE: The government's case would be two to three  
23 weeks on the conservative end, your Honor.

24 THE COURT: When do you think, from the government's  
25 perspective, the case will be ready to be tried?

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1 MR. FEE: Your Honor, we have been hanging around a  
2 while.

3 THE COURT: You are ready.

4 MR. FEE: We are ready, your Honor.

5 THE COURT: We all need to look at our calendars. Let  
6 me ask the defense this, which I don't know which lawyer is  
7 going to speak to it. But Mr. Hueston has been speaking so  
8 far. If you were a guessing man, do you think this is likely  
9 to be a disposition or a trial at this point? I can only ask  
10 for a prediction of likely, not for a commitment, just your own  
11 guess.

12 MR. ROSENBERG: We are in some discussions, your  
13 Honor, with the government and I think they owe us a phone call  
14 at this point.

15 THE COURT: Would you say it's a 50/50, could go  
16 either way?

17 MR. ROSENBERG: Yes.

18 THE COURT: You can't say more than that at this  
19 point.

20 MR. ROSENBERG: Yes.

21 THE COURT: I am just trying to use that for planning  
22 purposes. Because two to three weeks is a bit of a block. I  
23 need to give that serious thought.

24 MR. ROSENBERG: I would estimate for the defense case  
25 approximately a week.

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1                   THE COURT: It could be a month-long trial. I am not  
2 going to consider the government's calendar, but I would like  
3 to know what conflicts defense counsel have in September or  
4 October.

5                   MR. ROSENBERG: Your Honor, I have a trial scheduled  
6 for early September with Judge Pauley. I don't know if that's  
7 going to go. I have two trials scheduled in January, one of  
8 which --

9                   THE COURT: I intend to try this before January.

10                  MR. ROSENBERG: I was going to say, Judge, I think the  
11 fall is reasonable for me, for a November or late October date.

12                  THE COURT: How about October 6. I am sure that's  
13 earlier than you expected, but that's a good time for me.

14                  MR. ROSENBERG: I prefer a little bit later in the  
15 month, Judge, but if that's your schedule.

16                  THE COURT: Yeah. That's my schedule. I have a  
17 two-week commitment early November to sit in another court. I  
18 don't want to run into that. I promised. So I need to start  
19 October 6. That's what it is. That's a Monday.

20                  Now, assuming we stick with the October 6 trial date  
21 and if there really is a trial, I would need all pretrial  
22 submissions by no later than September 12. That would be voir  
23 dire, requests to charge, fully briefed motions in limine, so  
24 you may have to work between yourselves and say, when do I have  
25 to make the motion and have a response and reply and everything

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1 done by September 12 without giving you the most time I can.  
2 That's only three weeks before trial. Everything has to be  
3 fully submitted September 12.

4 404(b), if there is any, I would say a full month  
5 before trial. That would be September 5. Give notice if you  
6 plan to produce any 404(b).

7 With respect to 3500, it's really only something the  
8 Court can request the government to do. The Court can't order  
9 early production. But the government in this district is  
10 generally willing to produce it the week before trial, at some  
11 point during that week. So if you're amenable to that,  
12 Mr. Fee, I would ask you to produce it in the week of 29th of  
13 September.

14 MR. FEE: Of course, your Honor.

15 THE COURT: You'll have the 3500 before the trial,  
16 which is basically a generous act by the government because the  
17 law is they don't have to do it, as you know, until after the  
18 witness has testified, but they tend to do it in this district  
19 before.

20 I think that takes care of all the pretrial dates,  
21 unless there is something you think I've missed.

22 Now, the motions are decided, so the speedy trial  
23 clock begins to run again today. I have to ask the defense, in  
24 view of the fact that you requested a trial late in October --  
25 I could accommodate you next week if you want or the week

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1 after, but I don't think that's your preference -- would it be  
2 your request that the time between today, which is July 23, and  
3 our trial date of October 6 be excluded so you will have the  
4 time to continue your talks with the government in hope of  
5 reaching a disposition and/or properly prepare for trial?

6 MR. ROSENBERG: That is our application, your Honor.

7 THE COURT: Any objection?

8 MR. FEE: We join.

9 THE COURT: At the request of the defense and without  
10 objection from the government, the time between July 23 and  
11 October 6 is excluded for the reasons stated on the record.

12 Is there anything further from any lawyer today?

13 MR. FEE: Not from the government, your Honor.

14 MR. ROSENBERG: Nothing from us. We are all set.

15 Thank you.

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